

which constituted his "complaint" against Mr. Cashin. It is not clear whether the appellant intended his letter to be an application for Mr. Cashin to be dealt with under Part VII of the Act or a complaint of Mr. Cashin's conduct in his professional capacity. It seems to us that he intended it to be both. Be that as it may, his letter contained two principal allegations against Mr. Cashin: that he made untrue statements in his affidavits and that he credited to the clients' account of his firm, Murphy & Dunbar, money which belonged to him personally in contravention of the provisions of Rule 6 of the Solicitors' Accounts Rules, 1967. The first allegation does not touch upon Mr. Cashin's conduct in his professional capacity. However, if an advocate knowingly deposes to an untrue statement in an affidavit, such conduct may well fall within paragraph (h) of section 84(2) of the Act. The second allegation, namely, a breach of Rule 6 of the Solicitors' Accounts Rules, 1967 does pertain to Mr. Cashin's conduct in his professional capacity and is also a matter falling within paragraph (j) of section 84(2). Having regard to these allegations the Council should have referred the appellant's letter to the Inquiry Committee, and we so held.

Order accordingly.

Solicitors: A.S.K. Wee; Tan, Rajah & Cheah.

**MOHAMED FAMI HASSAN v. SWISSCO PTE LTD.
& GOVERNMENT OF THE REPUBLIC OF IRAQI
(IRAQI STATE ENTERPRISE FOR MARITIME
TRANSPORT) – THIRD PARTY**

[O.C.J. (Sinnathuray J.) June 19, 1985]

[Singapore – Suit No. 2517 of 1981]

Tort – Negligence – Liability – Plaintiff seriously injured on board vessel – Loading oil drums – Use of can hooks – Whether safe system of work – Duty of employers.

Employment – Worker injured in course of employment – Employers' duty of care.

Damages – Quadriplegic – Quantum – Interest whether payable.

In this case, it is not disputed that during the course of loading three oil drums from "Sea Supply" (owned by the defendants) onto a larger vessel "14 Ramadhan", one drum fell and the plaintiff was very seriously injured. Can hooks were used for the loading. The plaintiff became a quadri-

plegic and was completely dependent on others for all his personal needs. The main issue was whether the defendants had provided a safe system of work.

Held: (1) it is not a safe system of work to use can hooks to load oil drums outside quiet waters. Net sling should have been used. It is the duty of the defendants as employers to take all reasonable steps to ensure the safety of their employees. The defendants should have foreseen that there was a likelihood of mishandling and therefore there was the danger that a drum or drums may fall. The defendants are therefore wholly to blame. Judgment was given for the plaintiff on liability;

(2) damages were awarded under the following heads:

- C** (a) General damages, i.e., for pain and suffering, and loss of amenities: \$180,000;
- (b) Loss of expectation of life: \$6,500;
- (c) Costs for future nursing care: \$122,400;
- (d) Loss of future earnings: \$25,200;
- (e) Actual loss of earnings: \$19,440;
- D** (f) Special damages: \$6,973 (agreed);

(3) judgment for \$360,513 and costs was entered for the plaintiff;

(4) no order for interest was made.

Case referred to:

- E** (1) *Soh Kheng Seng v. Leong Chee Hoong & Anor.* [1980] 2 M.L.J. xcix.

CIVIL SUIT.

- F** *Mohamed bin Abdullah* for the plaintiff.
Anne Loke (Miss) for the defendant.
Third Party absent.

Cur. Adv. Vult.

- G** *Sinnathuray J.* : In this action, the plaintiff's claim is for damages for personal injuries and for consequential loss suffered by him as a result of an accident which occurred on May 27, 1979 in the course of his employment by the defendants on board a motor launch "Sea Supply". It is not in dispute that during the course of loading three oil drums from "Sea Supply" onto a larger vessel "14 Ramadhan" one drum fell and the plaintiff was injured.

- H** At the material time "Sea Supply" and "14 Ramadhan" were somewhere near the Eastern Anchorage, about two miles away from the last of the vessels anchored at this Anchorage. On this evidence the vessels were somewhere close to international waters. Captain Hong who gave evidence for the defendants as an expert witness when asked on this topic said that the vessels were outside Port Limits and were in waters used by foreign

going ships which did not intend to enter the Port of Singapore.

Before I deal with the accident, I should say a few words on "Sea Supply". It is one of the vessels owned by the defendants, a ship chandling company. It is a motor launch with a hatch in the hull which extends over most of the space below the deck of the vessel. Nearer the stern of the launch is the wheelhouse. As the name it bears, the launch is used for the supply of stores and other things required by ships that come into Singapore. The crew of "Sea Supply" consists of a serang, an engine driver and two deckhands who have been described by the managing director of the defendants as hatch coolies.

On the material day "Sea Supply" went to "14 Ramadhan" to deliver 21 drums of lubricating oil. The plaintiff said that as "Sea Supply" approached "14 Ramadhan", the latter was making way through the water. As "14 Ramadhan" was going faster than "Sea Supply", on instructions from the serang, the plaintiff contacted "Sea Supply" over the radio telephone and requested it to slow down. In due course "Sea Supply" came alongside "14 Ramadhan". The plaintiff said that "Sea Supply" was secured to "14 Ramadhan" at the bow and stern.

There is an issue of fact whether "14 Ramadhan" was making way through the water when "Sea Supply" came alongside. Chan, the other hatch coolie, who gave evidence for the defendants said that "14 Ramadhan" was anchored. He said that when they were approaching "14 Ramadhan", he did not see any waves caused by the propeller of that vessel. He therefore viewed that the vessel was anchored.

On the subject of mooring, Chan said that "Sea Supply" was moored to "14 Ramadhan" by the bow mooring line only. In cross-examination, however, Chan was not sure whether the "Sea Supply" was also secured to "14 Ramadhan" at the aft. He said he did not see it because as soon as he had tied "Sea Supply" to "14 Ramadhan" at the bow he went down into the hatch to prepare for the unloading of the drums.

I find as a fact that "14 Ramadhan" was making way outside the Eastern Anchorage when "Sea Supply" came alongside and made fast to it as described by the plaintiff. I reject the evidence of Chan, for there is other evidence that it does not follow because he did not see any waves in the rear

A of "14 Ramadhan" that "14 Ramadhan" was not making way through the water. As regards the mooring of "Sea Supply", it is inconceivable that Chan who was on a small vessel did not see "Sea Supply" fastened to "14 Ramadhan" at the stern. Here I recall the evidence of Captain Bird, the expert witness for the plaintiff, who said that even if B "14 Ramadhan" had been anchored it would be extremely hazardous for cargo to be transferred from "Sea Supply" to "14 Ramadhan" without having mooring lines fore and aft. Also, on the evidence, I accept the submission of Mr. Abdullah for the C plaintiff that it is not altogether unusual for a vessel to load whilst it is making way.

Next, on the topic of loading of the drums from "Sea Supply" onto "14 Ramadhan", it is not in dispute that Chan was in the hatch deck of "Sea Supply". A derrick line came down from "14 D Ramadhan" with a hook at the end of the line. Chan used drum hooks, also described as can hooks, and fastened three drums. Earlier, Chan had put the ring hook which is at one end of the can hooks onto the hook of the derrick line. Chan then signalled to the plaintiff who was on the deck of "Sea E Supply" that the drums were ready to be hoisted. The plaintiff in turn signalled a deckhand on the deck of "14 Ramadhan" that "Sea Supply" was ready to have the drums lifted. It is to be inferred, as there is no direct evidence, that the deckhand on "14 Ramadhan" then signalled his winch operator F to start the winch for the three drums to be lifted from "Sea Supply". The evidence is the drums were lifted to about 18 to 20 feet above the deck of "Sea Supply". At that height, the drums were at about the deck level of "14 Ramadhan".

G As to what happened then, there are two versions. The plaintiff said that when the drums were above "Sea Supply", the serang gave instructions to release or cut the bow line. He said the instructions were not directed to Chan or himself. He said he went forward from the area of the wheelhouse where he was standing and was proceeding H towards the bow when suddenly he was knocked down and became unconscious. According to him, the reason why the serang had given those instructions was because "14 Ramadhan" was by now moving faster than "Sea Supply".

I On the other hand, for the defendants, Chan said that when the drums were above "Sea Supply", he came out of the hatch. He heard the instructions of the serang to loosen the bow line. According to him, the instructions were given by the serang because the three drums on the derrick line

were suspended over "Sea Supply." He inferred that the *serang* considered that to be a danger and wanted the bow line loosened so that "Sea Supply" would be away from the overhanging drums.

In considering the two versions, I have reviewed the evidence of the plaintiff and Chan. I have already, for reasons given, found as a fact that "14 Ramadhan" was making way through the water when "Sea Supply" came alongside. In deciding that issue, I accepted the evidence of the plaintiff. Here too I prefer the evidence of the plaintiff to that of Chan. It was the plaintiff and not Chan who went forward to the bow of the ship to cut the mooring line. At that time, one drum fell on the plaintiff and he was injured. I do not accept the evidence of Chan that there was a lapse of 5 minutes when the drums were suspended above "Sea Supply". As I view the evidence, I do not think it would have been as long as that. Even the experts cannot say for sure what went wrong that day, but this much is clear. When the drums were at the deck level of "14 Ramadhan", for some reason, the derrick could not swing the drums onto the deck of "14 Ramadhan". In the suspended situation, due to the relative movement of the two vessels and other strains, one drum fell down.

The main issue is whether the defendants had provided a safe system of work. The question is: Was the use of can hooks a safe system of work for the loading of drums from the "Sea Supply" onto "14 Ramadhan" that day? Two expert witnesses have given evidence on this issue. The managing director of the defendants also sought to give such evidence. I have heard submissions on the expert evidence. I do not propose to go into the details. There are the reports of Captain Bird and Captain Hong. In arriving at my decision, it is sufficient to say that I accept the firm view of Captain Bird. I quote from his report:

"The use of 'Can Hooks' ashore, and on board vessels in port, in quiet, protected waters is certainly accepted internationally. However, to use such equipment in the open sea, when the supply vessel and the recipient vessel may well, in fact probably will, move vertically up and down relative to each other, the use of such equipment could be hazardous.

Further it would appear that the two vessels were underway and making way through the water. This would increase the possibility of such relative movement. With the probable, relative movement, and the fact that the 'hooks' must be held in position, until the strain is taken on the lifting chains, extremely good co-ordination between the persons putting the hooks in position, and the winch operator is absolutely essential. In this case, the deckhand on the 'Sea Supply' had to signal somebody on the '14 Ramadhan',

A who in turn would have to signal the winch operator. Not only does such a situation allow for the strain to be taken, released, and taken again, due to the relative movement of the two vessels, but obviously increases the possibility of an accident occurring such as crushed fingers or hands, or a drum slipping out of the hooks as it is lifted."

B The gist of Captain Hong's evidence is that the use of can hooks was a safe method for the operation that day. It is enough that I refer only to one aspect of his evidence. He is of the view that if the vessel was making way, can hooks would be of help during the operation of loading drums because the vessel will be either moving at a very slow speed or stemming the tide, meaning, keeping enough speed for steerage way against the oncoming tidal stream. With due respect to him, I cannot agree with him. It is contrary to the specific instructions that were given to him when he was with Neptune Orient Lines, that masters of vessels of the Company were not to collect stores or other things whilst the vessels were making way outside Port Limits. It seems to me that this in itself was considered unsafe by the Company.

E On a consideration of the whole of the evidence, the conclusion I come to is that it is not a safe system of work to use can hooks to load oil drums outside quiet waters. It is because can hooks were used that the accident occurred. What should have been used that day to load the drums was a net sling.

F Miss Loke for the defendants seeks to put the blame on the crew of "14 Ramadhan". She submits that it was the negligence of the crew of "14 Ramadhan" that was the proximate cause of the accident. Leaving aside that there is no evidence as to what went wrong, why the three drums were suspended above "Sea Supply", how when held together by can hooks, one of the drums fell down, even if one of the crew of "14 Ramadhan" was negligent in handling the derrick, it does not absolve the defendants from blame. In my view, it is the duty of the defendants, as employers, to take all reasonable steps to ensure the safety of their employees. The defendants should have foreseen that there was a likelihood of mishandling and therefore there was the danger that a drum or drums may fall. In this context, it should also be borne in mind, as Mr. Abdullah said, the employees of the defendants were working in a confined space on the deck of "Sea Supply". If an oil drum was to fall, as it did fall, there was really very little space for the crew on board "Sea Supply" to move away from the danger. The result was that the plaintiff suffered very serious injuries. For these reasons, I

find that the defendants are wholly to blame and accordingly I give judgment for the plaintiff on liability.

On damages, I will deal with them in the order in which submissions have been made.

First there is general damages. I will not go through the medical reports on the plaintiff. It is sufficient to say that the plaintiff has suffered tragic injuries. He is now a quadriplegic. He is totally incapable of taking care of himself. As Mr. Mohamed bin Abdullah rightly says the plaintiff is completely dependent on others for all his personal needs. Even if a fly were to sit on his nose, he is utterly helpless. It is beyond dispute that his condition will get worse in the near future.

Mr. Mohamed bin Abdullah has shown me a table of facts and figures where in England, speaking broadly, damages for quadriplegics are about double that of paraplegics. Reported cases show, says Mr. Abdullah, that damages for paraplegics are in the region of \$90,000 to \$100,000. In Suit No. 3541 of 1982, Abdul Wahab Ghows J. gave a plaintiff who was paralysed from the waist down general damages of \$100,000. There is, however, the case of *Soh Kheng Seng v. Leong Chee Hoong & Anor.*⁽¹⁾ where Rajah J. in 1982 gave the plaintiff, a quadriplegic, \$110,000 for loss of amenities, pain and suffering. Mr. Mohamed bin Abdullah submits that that is on the low side. I accept that submission. In this case, I award for general damages, that is to say, for pain and suffering, and loss of amenities, \$180,000.

On the second head, for loss of expectation of life, counsel are agreed on the quantum of \$6,500.

The third is costs for future nursing care. At present the plaintiff is in the Chronic Sick Unit of Woodbridge Hospital. There is evidence that when the plaintiff receives his compensation, he will be discharged from Woodbridge Hospital. Having regard to his disabilities, I am satisfied that he will have to be taken care of in a private nursing home. Such a home is available. Mr. Jagjit Singh has given evidence that he runs a home for patients like the plaintiff. He is prepared to take the plaintiff. He has given evidence of expenses the plaintiff will have to defray to stay in the nursing home. Mr. Mohamed bin Abdullah submits that the plaintiff's expectation of life would be about nine years. This is something which is very difficult to decide. Even doctors cannot say. Miss Loke for the defendants has, I think, side-stepped the issue by saying that

A the plaintiff be given a lump sum of \$10,000. It is totally unacceptable to me. I must be reasonable and do the best I can. I will give the plaintiff six years and put the cost of nursing in the monthly sum of \$1,200. That works out to \$122,400.

B The fourth is for loss of future earnings. Again, as for expectation of life, I will use the multiplier of six, and having considered the earning capacity and the depressed conditions prevailing in the shipping world, I will use the multiplicand of \$350 per month. It gives the sum of \$25,200.

C As for the last head, actual loss of earnings, I accept the figure of \$270 per month. Counsel are agreed that it is for six years. The amount is \$19,440.

D There is an agreed sum on other special damages of \$6,973.

So, there will be judgment for the plaintiff for \$360,513 and costs. I make no order for interest; in doing so I follow the unreported decision cited to me of Chua J.*

E

Claim allowed.

Solicitors: *Murphy & Dunbar; Cooma Lau & Loh & M. Karthigesu.*

F * See *Tominam bte. Tukimin v. Toh Kai Chup* [1985] 2 M.L.J. 345.

G

TI SIAN KI v. OVERSEA-CHINESE BANKING CORPORATION LIMITED

[A.C.J. (Chua J.) August 2, 1985]

H

[Singapore — District Court Appeal No. 55 of 1984]

Landlord and Tenant — Parting of possession by tenant — Claim for possession by landlord — Whether statutory tenant — Control of Rent Act (Cap. 266), s. 27(a).

I This is an appeal against the decision of the District Court giving judgment for the respondents who had claimed possession of certain premises. The only issue for determination by the lower court is whether the appellant and the 2nd defendant are still in possession of the said premises. If not, they ceased to be statutory tenants and lose the protection of the Control of Rent Act. The 2nd defendant and the 3rd defendants did not appeal. On appeal by the appellant: